

1 MARC S. HINES (SBN 140065)  
mhines@lawhhp.com  
2 NICOLE M. HAMPTON (SBN 189024)  
nhampton@lawhhp.com  
3 BRIAN PELANDA (SBN 278453)  
bpelanda@lawhhp.com  
4 **HINES HAMPTON PELANDA LLP**  
23 Corporate Plaza Dr., Suite 150  
5 Newport Beach, California 92260  
Tel.: (714) 513-1122  
6 Fax: (714) 242-9529

7 Attorneys for Defendant  
8 Nationwide Mutual Insurance Company

9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

12 SAVAGE RABBIT DISTRIBUTING,  
13 INC.. a California Corporation

Case No. 8:22-cv-01420-CJC-ADS

14 Plaintiff,

15 **STIPULATED PROTECTIVE  
ORDER**

16 vs.

17 NATIONWIDE MUTUAL  
18 INSURANCE COMPANY, an Ohio  
19 Corporation; and DOES 1-100,  
inclusive,

20 Defendants.

23 **PURPOSES AND LIMITATIONS**

24 Discovery in this action is likely to involve production of confidential,  
25 proprietary or private information for which special protection from public  
26 disclosure and from use for any purpose other than pursuing this litigation may be  
27 warranted. Accordingly, PLAINTIFF SAVAGE RABBIT DISTRIBUTING, INC.  
28 and DEFENDANT NATIONWIDE MUTUAL INSURANCE COMPANY (jointly,

1 the “parties”) hereby stipulate to and petition the Court to enter the following  
2 Stipulated Protective Order. The parties acknowledge that this Order does not confer  
3 blanket protections on all disclosures or responses to discovery and that the  
4 protection it affords from public disclosure and use extends only to the limited  
5 information or items that are entitled to confidential treatment under the applicable  
6 legal principles.

7 **2. GOOD CAUSE STATEMENT**

8 This action is likely to involve trade secrets and other valuable research,  
9 development, commercial, financial, technical and/or proprietary information for  
10 which special protection from public disclosure and from use for any purpose other  
11 than prosecution of this action is warranted. Such confidential and proprietary  
12 materials and information consist of, among other things, confidential business or  
13 financial information, information regarding confidential business practices and  
14 procedures, including claims handling manuals, or other confidential research,  
15 development, or commercial information (including information implicating privacy  
16 rights of third parties such as claim files or personnel records), information  
17 otherwise generally unavailable to the public, or which may be privileged or  
18 otherwise protected from disclosure under state or federal statutes, court rules, case  
19 decisions, or common law. Accordingly, to expedite the flow of information, to  
20 facilitate the prompt resolution of disputes over confidentiality of discovery  
21 materials, to adequately protect information the parties are entitled to keep  
22 confidential, to ensure that the parties are permitted reasonable necessary uses of  
23 such material in preparation for and in the conduct of trial, to address their handling  
24 at the end of the litigation, and serve the ends of justice, a protective order for such  
25 information is justified in this matter. It is the intent of the parties that information  
26 will not be designated as confidential for tactical reasons and that nothing be so  
27 designated without a good faith belief that it has been maintained in a confidential,  
28

1 non-public manner, and there is good cause why it should not be part of the public  
2 record of this case.

3 **ACKNOWLEDGMENT OF UNDER SEAL FILING PROCEDURE**

4 The parties further acknowledge, as set forth in Section 14.3, below, that this  
5 Stipulated Protective Order does not entitle them to file confidential information  
6 under seal. Local Civil Rule 79-5 sets forth the procedures that must be followed  
7 and the standards that will be applied when a party seeks permission from the court  
8 to file material under seal. There is a strong presumption that the public has a right  
9 of access to judicial proceedings and records in civil cases. In connection with non-  
10 dispositive motions, good cause must be shown to support a filing under seal. See  
11 Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006),  
12 Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-  
13 Welbon v. Sony Electrics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even  
14 stipulated protective orders require good cause showing), and a specific showing of  
15 good cause or compelling reasons with proper evidentiary support and legal  
16 justification must be made with respect to Protected Material that a party seeks to  
17 file under seal. The parties' mere designation of Disclosure or Discovery Material as  
18 CONFIDENTIAL does not— without the submission of competent evidence by  
19 declaration, establishing that the material sought to be filed under seal qualifies as  
20 confidential, privileged, or otherwise protectable—constitute good cause.

21 Further, if a party requests sealing related to a dispositive motion or trial, then  
22 compelling reasons, not only good cause, for the sealing must be shown, and the  
23 relief sought shall be narrowly tailored to serve the specific interest to be protected.  
24 See Pintos v. Pacific Creditors Ass'n., 605 F.3d 665, 677-79 (9th Cir. 2010). For  
25 each item or type of information, document, or thing sought to be filed or introduced  
26 under seal, the party seeking protection must articulate compelling reasons,  
27 supported by specific facts and legal justification, for the requested sealing order.  
28 Again, competent evidence supporting the application to file documents

1 under seal must be provided by declaration.

2 Any document that is not confidential, privileged, or otherwise protectable in  
3 its entirety will not be filed under seal if the confidential portions can be redacted. If  
4 documents can be redacted, then a redacted version for public viewing, omitting  
5 only the confidential, privileged, or otherwise protectable portions of the document,  
6 shall be filed. Any application that seeks to file documents under seal in their  
7 entirety should include an explanation of why redaction is not feasible.

8 **4. DEFINITIONS**

9 4.1 Action: This pending lawsuit.

10 4.2 Challenging Party: a Party or Non-Party that challenges the  
11 designation of information or items under this Order.

12 4.3 “CONFIDENTIAL” Information or Items: information (regardless of  
13 how it is generated, stored or maintained) or tangible things that qualify for  
14 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
15 the Good Cause Statement.

16 4.4 Counsel: Counsel of Record (as well as their support staff).

17 4.5 Designating Party: a Party or Non-Party that designates information or  
18 items that it produces in disclosures or in responses to discovery as  
19 “CONFIDENTIAL.”

20 4.6 Disclosure or Discovery Material: all items or information, regardless  
21 of the medium or manner in which it is generated, stored, or maintained (including,  
22 among other things, testimony, transcripts, and tangible things), that are produced or  
23 generated in disclosures or responses to discovery.

24 4.7 Expert: a person with specialized knowledge or experience in a matter  
25 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
26 an expert witness or as a consultant in this Action.

27 4.8 House Counsel: attorneys who are employees of a party to this Action.  
28 House Counsel does not include Outside Counsel of Record or any other outside

1 counsel.

2       4.9 Non-Party: any natural person, partnership, corporation, association or  
3 other legal entity not named as a Party to this action.

4       4.10 Outside Counsel of Record: attorneys who are not employees of a party  
5 to this Action but are retained to represent a party to this Action and have appeared  
6 in this Action on behalf of that party or are affiliated with a law firm that has  
7 appeared on behalf of that party, and includes support staff.

8       4.11 Party: any party to this Action, including all of its officers, directors,  
9 employees, consultants, retained experts, and Outside Counsel of Record (and their  
10 support staffs).

11       4.12 Producing Party: a Party or Non-Party that produces Disclosure or  
12 Discovery Material in this Action.

13       4.13 Professional Vendors: persons or entities that provide litigation support  
14 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
15 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
16 and their employees and subcontractors.

17       4.14 Protected Material: any Disclosure or Discovery Material that is  
18 designated as “CONFIDENTIAL.”

19       4.15 Receiving Party: a Party that receives Disclosure or Discovery  
20 Material from a Producing Party.

21       **5. SCOPE**

22       The protections conferred by this Stipulation and Order cover not only  
23 Protected Material (as defined above), but also (1) any information copied or  
24 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
25 compilations of Protected Material; and (3) any testimony, conversations, or  
26 presentations by Parties or their Counsel that might reveal Protected Material. Any  
27 use of Protected Material at trial shall be governed by the orders of the trial judge  
28

1 and other applicable authorities. This Order does not govern the use of Protected  
2 Material at trial.

3 **6. DURATION**

4 Once a case proceeds to trial, information that was designated as  
5 CONFIDENTIAL or maintained pursuant to this protective order used or introduced  
6 as an exhibit at trial becomes public and will be presumptively available to all  
7 members of the public, including the press, unless compelling reasons supported by  
8 specific factual findings to proceed otherwise are made to the trial judge in advance  
9 of the trial. See Kamakana, 447 F.3d at 1180-81 (distinguishing “good cause”  
10 showing for sealing documents produced in discovery from “compelling reasons”  
11 standard when merits-related documents are part of court record). Accordingly, the  
12 terms of this protective order do not extend beyond the commencement of the trial.

13 **7. DESIGNATING PROTECTED MATERIAL**

14 7.1 Exercise of Restraint and Care in Designating Material for  
15 Protection. Each Party or Non-Party that designates information or  
16 items for protection under this Order must take care to limit any such designation to  
17 specific material that qualifies under the appropriate standards. The Designating  
18 Party must designate for protection only those parts of material, documents, items or  
19 oral or written communications that qualify so that other portions of the material,  
20 documents, items or communications for which protection is not warranted are not  
21 swept unjustifiably within the ambit of this Order.

22 Mass, indiscriminate or routinized designations are prohibited. Designations  
23 that are shown to be clearly unjustified or that have been made for an improper  
24 purpose (e.g., to unnecessarily encumber the case development process or to impose  
25 unnecessary expenses and burdens on other parties) may expose the Designating  
26 Party to sanctions.

27 If it comes to a Designating Party’s attention that information or items that it  
28

1 designated for protection do not qualify for protection, that Designating Party must  
2 promptly notify all other Parties that it is withdrawing the inapplicable designation.

3       7.2     Manner and Timing of Designations. Except as otherwise provided in  
4 this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material  
5 that qualifies for protection under this Order must be clearly so designated before  
6 the material is disclosed or produced.

7              Designation in conformity with this Order requires:

8                  (a) for information in documentary form (e.g., paper or electronic  
9 documents, but excluding transcripts of depositions or other pretrial or trial  
10 proceedings), that the Producing Party affix at a minimum, the legend  
11 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that  
12 contains protected material. If only a portion of the material on a page qualifies for  
13 protection, the Producing Party also must clearly identify the protected portion(s)  
14 (e.g., by making appropriate markings in the margins).

15              A Party or Non-Party that makes original documents available for inspection  
16 need not designate them for protection until after the inspecting Party has indicated  
17 which documents it would like copied and produced. During the inspection and  
18 before the designation, all of the material made available for inspection shall be  
19 deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
20 documents it wants copied and produced, the Producing Party must determine which  
21 documents, or portions thereof, qualify for protection under this Order. Then, before  
22 producing the specified documents, the Producing Party must affix the  
23 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a  
24 portion of the material on a page qualifies for protection, the Producing Party also  
25 must clearly identify the protected portion(s) (e.g., by making appropriate markings  
26 in the margins).

27                  (b) for testimony given in depositions that the Designating Party  
28 identifies the Disclosure or Discovery Material on the record, before the close of the

deposition all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend "CONFIDENTIAL." If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## **8. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

8.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37-1 et seq.

8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a joint stipulation pursuant to Local Rule 37-2.

8.4 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is

1 entitled under the Producing Party's designation until the Court rules on the  
2 challenge.

3 **9. ACCESS TO AND USE OF PROTECTED MATERIAL**

4       9.1 Basic Principles. A Receiving Party may use Protected Material that is  
5 disclosed or produced by another Party or by a Non-Party in connection with this  
6 Action only for prosecuting, defending or attempting to settle this Action. Such  
7 Protected Material may be disclosed only to the categories of persons and under the  
8 conditions described in this Order. When the Action has been terminated, a  
9 Receiving Party must comply with the provisions of section 15 below (FINAL  
10 DISPOSITION).

11           Protected Material must be stored and maintained by a Receiving Party at a  
12 location and in a secure manner that ensures that access is limited to the persons  
13 authorized under this Order.

14       9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
15 otherwise ordered by the court or permitted in writing by the Designating Party, a  
16 Receiving Party may disclose any information or item designated  
17 “CONFIDENTIAL” only to:

18               (a) the Receiving Party’s Outside Counsel of Record in this Action, as  
19 well as employees of said Outside Counsel of Record to whom it is reasonably  
20 necessary to disclose the information for this Action;

21               (b) the officers, directors, and employees (including House Counsel) of  
22 the Receiving Party to whom disclosure is reasonably necessary for this Action;

23               (c) Experts (as defined in this Order) of the Receiving Party to whom  
24 disclosure is reasonably necessary for this Action and who have signed the  
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

26               (d) the court and its personnel;

27               (e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the

“Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediators or settlement officers and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

**10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” attached hereto as Exhibit A.

## **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

**12. MISCELLANEOUS**

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Local Civil Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

**13. FINAL DISPOSITION**

After the final disposition of this Action, as defined in paragraph 6, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in

1 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,  
2 summaries, and any other format reproducing or capturing any of the Protected  
3 Material. Whether the Protected Material is returned or destroyed, the Receiving  
4 Party must submit a written certification to the Producing Party (and, if not the same  
5 person or entity, to the Designating Party) by the 60-day deadline that (1) identifies  
6 (by category, where appropriate) all the Protected Material that was returned or  
7 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
8 abstracts, compilations, summaries or any other format reproducing or capturing any  
9 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
10 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
11 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
12 reports, attorney work product, and consultant and expert work product, even if such  
13 materials contain Protected Material. Any such archival copies that contain or  
14 constitute Protected Material remain subject to this Protective Order as set forth in  
15 Section 6 (DURATION).

16 **14. VIOLATION**

17 Any violation of this Order may be punished by appropriate measures  
18 including, without limitation, contempt proceedings and/or monetary sanctions.

19 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

20 Dated: May 10, 2023

21 **DOUGLAS W. GASTÉLUM, ESQ.**

22 By: /s/ Douglas W Gastérum  
23 Douglas W. Gastérum  
24 Attorney for Plaintiff,  
SAVAGE RABBIT DISTRIBUTING, INC.

25 ////

26 ////

27 ////

1 Dated: May 10, 2023

HINES HAMPTON PELANDA LLP

2  
3 By: /s/ Nicole M. Hampton  
4 Nicole M. Hampton  
5 Attorneys for Defendant,  
6 NATIONWIDE MUTUAL INSURANCE  
COMPANY

7  
8 **ATTESTATION OF CONCURRENCE IN FILING**

9 I hereby attest and certify that on May 10, 2023, I received concurrence from  
10 Plaintiff's counsel, Douglas Gastélum, to file this document with his electronic  
11 signature attached. I certify under penalty of perjury under the laws of the United  
12 States of America that the foregoing is true and correct. Executed on May 10, 2023.

13 /s/ Nicole M. Hampton

14  
15 **ORDER**

16  
17 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

18 Dated: May 12, 2023

19  
20 /s/ Autumn D. Spaeth  
21 HON. AUTUMN D. SPAETH  
22 United States Magistrate Judge